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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/126,505	09/24/1993	JOHN P. ATKINSON	WU101CIP	8768

23579 7590 08/14/2003

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EXAMINER

KUNZ, GARY L

ART UNIT

PAPER NUMBER

1647

47

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	Examiner	Group Art Unit	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on PETITION FILED 6-13-03.
 This action is FINAL.
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1, 3-5, 8-16, 18-20, 23-22, AND 34 is/are pending in the application.
 Of the above claim(s) _____ is/are withdrawn from consideration.
 Claim(s) 1, 3-5, 10-16, 18-20, 26-32, AND 34 is/are allowed.
 Claim(s) 8, 9, AND 23-25 is/are rejected.
 Claim(s) _____ is/are objected to.
 Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
 The proposed drawing correction, filed on _____ is approved disapproved.
 The drawing(s) filed on _____ is/are objected to by the Examiner.
 The specification is objected to by the Examiner.
 The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 All Some* None of the CERTIFIED copies of the priority documents have been received.
 received in Application No. (Series Code/Serial Number) _____.
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413
 Notice of References Cited, PTO-892 Notice of Informal Patent Application, PTO-152
 Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

Serial Number: 08/126,505

Art Unit: 1647

In view of applicant's petition filed June 13, 2003 requesting that all of the remaining species of fusion proteins be examined, FINALITY is withdrawn and prosecution on the merits is reopened and all pending claims 1, 3-5, 8 - 16, 18 - 20, 23 – 32, and 34 are under examination. Therefore, the petition filed June 13, 2003 is now mooted.

The rejection of claims 1, 3, 8, 9, 12, 13, 15, 16, 18, 23, 24, 27, 28, and 30 – 32 as being obvious over Lowell et al. in view of Fearon et al., Cara, Atkinson et al., and Bell et al. was reversed by decision of Board mailed February 3, 2003.

The rejection of claims 8, 9, 23, and 24 under 35 USC 112, second paragraph, as being indefinite was affirmed by the decision of the Board mailed February 3, 2003. This same issue appears in claim 25. Therefore, this claim is also rejected under 35 USC 112, second paragraph, for being vague and indefinite.

With regard to this indefiniteness rejection, the Board stated:

Claims 8, 9, 23, and 24 have been determined by the examiner to be indefinite for a very specific reason, i.e., "it is not clear whether all instances of a given residue are to be substituted, i.e. whether [sic] all "I" residues are replaced by either L or V or only some of the I residues, or only a single I residue, and if so, which one." Examiner's Answer, page 4. Appellant's arguments in the Appeal Brief in regard to this rejection do not acknowledge the specific reasons the examiner gives for this rejection. See Appeal Brief, pages 12 – 13. The examiner has identified a plausible ambiguity in the claims. It is appellant's responsibility then to argue the specifics of the examiner's position. This has not happened.

An ambiguous claim is indefinite under 35 U.S.C. 112, second paragraph. In re Zletz, 893 F.2d 319, 321-322,

13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Appellants have not directly argued the propriety of the rejection as made in the Examiner's Answer. Under these circumstances we will affirm the examiner's rejection under 35 USC 112, second paragraph.

Claims 1, 3 – 5, 10 – 16, 18 – 20, 26 – 32, and 34 are allowable.

Claims 8, 9, 23 – 25 are rejected.

All communications concerning this Office action should be directed to Gary L. Kunz whose telephone number is 703-308-4623.



GARY KUNZ
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